

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 16-CR-175

JASON LUDKE,

Defendant.

LUDKE'S MOTION FOR PERMISSION TO WEAR KUFİ IN COURT

Jason Ludke is set to appear before this Court on October 25, 2018, for a change of plea hearing. Ludke is a practicing Muslim. One of the tenets of his religion is to follow the "Sunna" and emulate the example of the Prophet, Mohammed, the messenger of Allah. Quran [4:80]. It is said that the Prophet Mohammed never appeared in public with his head uncovered. Hence, to follow the Sunnah, it is generally expected for Muslims who follow the Sunnah to keep their head covered in public. Ludke wishes to do so in Court. However, he is in custody, and the United States Marshals Service (USMS) has indicated that under its policies, religious headwear is not permitted.

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Ludke brings this request under the Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488 (November 16, 1993), codified at 42 U.S.C. § 2000bb – 2000bb-4 (“RFRA”), and the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. § 2000cc. The RLUIPA “protects the rights of institutionalized persons who require government permission and accommodation to practice their religion.” *Ali v. Stephens*, 69 F. Supp. 3d 633, 642 (E.D. Texas 2014) citing *Cutter v. Wilkinson*, 544 U.S. 709, 721 (2005). Both RFRA and RLUIPA prohibit the government from imposing a substantial burden on a prisoner’s religious exercise unless that burden both furthers a compelling governmental interest, and is the least restrictive means of furthering that interest. *Id.*

1. Preventing Ludke from wearing his Kufi substantially burdens his religious exercise.

According to the USMS, the restriction that prevents Ludke from wearing his kufi is USMS policy directive 9.20(D)(4)(a). That policy allows inmates to maintain the following religious property: “Religious medals: one medal may be retained only if it is of a size and weight which poses no threat as a potential weapon or escape device.” *Id.* This policy poses a substantial burden on Ludke’s religious exercise. *Ajala v. West*, 106 F. Supp. 3d 976, 981 (W.D. Wis. 2015) (quoting *Holt v. Hobbs*, 135 S.Ct. 853, 862 (2015) (“If plaintiff’s religious beliefs require him to wear his kufi “at all times,” then a rule that allows plaintiff to wear his kufi “most of the time” imposes a substantial

burden on his religious exercise because the rule requires him to “engage in conduct that seriously violates his religious beliefs.””).

2. The USMS policy is not the least restrictive means of furthering a compelling government interest.

Ludke concedes that the USMS has a compelling interest in the safety of inmates and those they come in contact with. However, this policy is not the least restrictive means of furthering that interest. Ludke has a kufi. He is allowed to wear it in his cell. The only identifiable interest that would preclude an inmate from wearing a kufi in court proceeding is the potential that inmate could hide contraband in the kufi. But the potential of an inmate hiding an item in a kufi is no different than an inmate hiding something in their sock or waistband. And to the extent that the Marshals have a concern, Ludke will consent to the examination of his kufi and other clothing both before and after court. *See Ali*, 69 F. Supp. 3d at 645 (restricting wearing of kufis is not the least restrictive means of reducing contraband because “the Kufi may be searched, just as any other item worn by an inmate.”).

For these reasons, Ludke respectfully asks that the Court enter an order allowing him to wear his kufi for court proceedings.

Dated at Milwaukee, Wisconsin, this 22nd day of October, 2018.

Respectfully submitted,

/s/ Joshua D. Uller

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